IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 23890 of 2006(R)

CMA.71/2004 of D.C. & SESSIONS COURT, ERNAKULAM
.....

PETITIONER:

RAVI THOMAS, AGED 54 YEARS,
S/O.THOMAS, A BLOCK, APARTMENT C-1,
STAR GARDENS, ELAMKULAM, VYTTILA P.O.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:
----

1. **P.M.MATHEW, STAR GARDENS,**
   B-2, APARTMENT A-2, ELAMKULAM,
   VYTTILA.P.O.

2. **PRASANNA KUMAR,**
   A BLOCK, APARTMENT C-1,
   STAR GARDENS, ELAMKULAM,
   VYTTILA.P.O.

BY ADV. SRI.B.RAMACHANDRAN for R1
SMT.JOLIMA GEORGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.23890/2006 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE CMA.NO.71/04 BEFORE THE DISTRICT COURT, ERNAKULAM.**

EXT.P2: **COPY OF THE I.A.585/06.**

EXT.P3: **COPY OF THE ORDER DTD. 6/07/06.**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 23890 OF 2006

= = = = = = = = = = = = = = =

Dated this the 11th day of October, 2007.

J U D G M E N T

This writ petition is filed to set aside Ext.P3 order passed in I.A.585/06 in CMA 71/04. It is an application to restore the CMA to file which was dismissed for default on the ground of absence of the lawyer. The learned counsel for the writ petitioner submits that it was on account of his absence the CMA was dismissed for default and it was not an intentional or deliberate omission. The Court below refused to set aside the order on the ground that in the trial court a ground was taken that for the default of the clerk and in the appeal it was on account of the default of the lawyer. Whatever it may be, when a lawyer himself has submitted that he was not in a position to attend the Court on account of the reasons stated, I feel credence has to be given to such statement and an opportunity has to be given to contest the

case on merits. Therefore, the order under challenge is set aside and the learned I Addl. District Judge, Ernakulam is directed to restore CMA 71/04 to file and dispose of the matter in accordance with law. Parties are directed to appear before the Court below on 13.11.07.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-